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In re Application of
Young, et al. :
Application No.: 10/663,154 :
Filed: NO FILING DATE :
Attorney Docket No.: 001674.093686 :

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JUL 16 2004

OFFICE OF PETITIONS

ON PETITION

This is a decision on the petition filed June 16, 2004, titled "Petition to Accord Filing Date." The petition will be treated under 37 CFR 1.53.

The petition is **dismissed**.

The application was submitted on September 15, 2003. On May 18, 2004, the Office of Initial Patent Examination mailed a Notice of Incomplete Nonprovisional Application indicating that no filing date was accorded the application because no specification and no claims were found among the application papers. The notice allowed a non-extendable period for reply of two months from its mailing date.

In response, the present petition was filed. Petitioner therein argued that the application papers did include a specification and claims. Petitioner provided a copy of the Office date-stamped postcard citing the following items as being received on September 15, 2003: a divisional application, assignment, declaration and power of attorney, check for \$750.00, cover sheet, transmittal, Information Disclosure Statement, and Form PTO-1449. Petitioner maintains that this postcard is *prima facie* evidence that a specification and claims were received on September 15, 2003.

The arguments have been considered, but are not persuasive. The Patent and Trademark Office (the "Office") file is the official record of the papers originally filed in this application. A review of the application file reveals that the only items received on September 15, 2003, were the oath, the transmittal sheet, coversheet, \$750.00 check, and Information Disclosure Statement. Absent evidence to the contrary, there is a strong presumption that the Office records are accurate. Applicant's postcard does not provide sufficient evidence to overcome this presumption as the itemization only states that a divisional application was enclosed without any intimation of what the application entailed. Further to this point, Section 503 of the *Manual of Patent Examining Procedure* (MPEP) states, in pertinent part,:

The identifying data on the postcard should include:

- A. applicant's name(s);
- B. title of invention;
- C. number of pages of specification, claims (for nonprovisional applications, and sheets of drawings;
- D. whether oath or declaration is included;
- E. a list of any additional forms included with the application (e.g., application transmittal form, application data sheet, fee transmittal form, and/or provisional application cover sheet); and
- F. amount and manner of paying the fee.

A return postcard should be attached to each patent application for which a receipt is desired. It is important that the return postcard itemize all of the components of the application. If the postcard does not itemize each component of the application, it will not serve as evidence that any component which was not itemized was received by the United States Patent and Trademark Office (USPTO.)

The aforementioned section of the MPEP makes clear that applicant's listing on the postcard of only a "divisional application" as being filed on September 15, 2003, cannot serve as *prima facie* evidence that a specification and claims were received. Accordingly, the application cannot be accorded a filing date of September 15, 2003, without further proof. **Petitioner is allowed a two-month period being from the mailing date of this decision to either provide sufficient proof that the specification and claims accompanied the original application papers, or file an oath or declaration covering the missing items and accepting the date the missing items were received as the application filing date. If no response is received in the two-month period, the application will be terminated in accordance with 37 CFR 1.53(e).**

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patent
Mail Stop Petitions
Box 1460
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By facsimile: (703) 872-9306
Attn: Office of Petitions

Telephone inquiries concerning this matter may be directed to the undersigned at (703) 305-0010.

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